

APR 20 2016



1140 S. Coast Highway 101
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

April 14, 2016

Margarita Brear
Agent for Service of Process
Compucraft Industries, Inc
8787 Olive Lane
Santee CA 92071

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Re: **Second Clean Water Act Notice of Intent to Sue/60-Day Notice Letter**
Compucraft Violations of General Industrial Permit

Dear Ms. Brear:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Compucraft Industries, Inc's violations of the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for Compucraft Industries, Inc, located at 8787 Olive Lane, Santee, CA ("Facility" or "Compucraft"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Compucraft's Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Compucraft's ongoing illegal activities are discharged into the San Diego River and Forester Creek, and eventually the Pacific Ocean. The public and members of CERF use the San Diego River and Forester Creek to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Compucraft Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Compucraft Owners and/or Operators' failure to comply with the Clean Water Act and the General

¹ On April 1, 2014, the State Water Resources Control Board adopted Order No. 2014-0057-DWQ, which amends the Industrial General Permit ("New Industrial Permit"). These amendments became effective on July 1, 2015. All references to the General Industrial Permit are to the Permit as it existed at the time of the violations noted herein.

Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. Compucraft enrolled as a discharger subject to the General Industrial Permit on March 7, 2012 for its facility at 8787 Olive Lane in Santee, California (WDID No. 9 371023545). Compucraft enrolled under the New Industrial Permit on May 21, 2015.

Pursuant to Section C(1) of the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. (See New Industrial Permit, §I.A.8. [dischargers must "comply with all requirements, provisions, limitations, and prohibitions in this General Permit."]). Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) General Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a General Industrial Permit renewal application. As an enrollee, Compucraft has a duty to comply with the General Industrial Permit and is subject to all of the provisions therein.

B. The Compucraft Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit

Since the Compucraft Owners and/or Operators began monitoring the Facility's discharges, this data has consistently indicated exceedances and violations of the New Industrial Permit. New Industrial Permit Sections III.C-D prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance.

New Industrial Permit Receiving Water Limitations VI.A-C prohibit storm water discharges to surface or groundwater that adversely impact human health or the environment, and prohibit storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards or applicable Basin Plan water quality standards.

The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard. (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the New Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The Compucraft Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the Facility's SWPPP pursuant to General Industrial Permit section (C)(3) and New Industrial Permit Section X.B.1.

As demonstrated by sample data submitted by Compucraft, from enrollment on March 7,

2012 through the present, the Compucraft Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of water quality prohibitions and limitations during every significant rain event. The Compucraft Facility's sampling data reflects numerous discharge violations (see below). Compucraft's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

This data further demonstrates the Compucraft Facility continuously discharges contaminated storm water during rain events which have not been sampled, including those noted in CERF's Notice Letter dated August 21, 2015.

No.	Date	Discharge Point	Parameter	Units	Result	Benchmark/WQO
1	9-15-2015	1-SE	Aluminum	mg/L	1.57	.75
2	9-15-2015	1-SE	Iron	mg/L	1.68	1.0
3	9-15-2015	1-SE	Zinc	mg/L	1.60	.12
4	9-15-2015	1-SE	TSS	mg/L	176	100
5	9-15-2015	2-NW	Aluminum	mg/L	2.86	.75
6	9-15-2015	2-NW	Iron	mg/L	2.44	1.0
7	9-15-2015	2-NW	Zinc	mg/L	.553	.12
8	9-15-2015	2-NW	TSS	mg/L	123	100
9	12-22-2015	1-SE	Aluminum	mg/L	1.23	.75
10	12-22-2015	1-SE	Iron	mg/L	1.69	1.0
11	12-22-2015	1-SE	Zinc	mg/L	1.02	.12
12	12-22-2015	2-NW	Aluminum	mg/L	1.57	.75
13	12-22-2015	2-NW	Iron	mg/L	1.61	1.0
14	12-22-2015	2-NW	Zinc	mg/L	.125	.12
15	1-5-2016	1-SE	Aluminum	mg/L	1.28	.75
16	1-5-2016	1-SE	Iron	mg/L	1.40	1.0
17	1-5-2016	1-SE	Zinc	mg/L	.138	.12
18	1-5-2016	2-NW	Aluminum	mg/L	1.99	.75
19	1-5-2016	2-NW	Iron	mg/L	2.39	1.0
20	1-5-2016	2-NW	Zinc	mg/L	1.18	.12

Every day the Compucraft Facility discharged or continues to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the General Industrial Permit or New Industrial Permit is a separate and distinct violation of the Permit(s) and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Compucraft Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 7, 2012. These violations are ongoing and will continue each day contaminated storm water is discharged in violation of the requirements of the General Industrial Permit and New Industrial Permit. CERF will include additional violations when information becomes available.

D. Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology

Effluent Limitation (B)(3) of the General Industrial Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of the Best Available Technology Economically Achievable (BAT) for toxic pollutants² and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.³ Likewise, the New Industrial Permit "requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards." (New Industrial Permit, §I.D.32; see also, §V.A.).

EPA Benchmarks and New Industrial Permit Numeric Action Levels (NALs) are the pollutant concentrations which generally indicate whether a facility has successfully developed or implemented BMPs that meet the BAT/BCT.

Compucraft has consistently failed to comply with the following EPA benchmarks:

Parameter	Benchmark ⁴ (mg/L)
Total Aluminum	.75
Total Iron	1.0
Total Zinc	.12 (Hardness Dependent)

The State Water Resources Control Board has also set Numeric Action Levels⁵ for numerous constituents, including the following:

Parameter	NAL
TSS (mg/L)	100

Compucraft has consistently exceeded this NAL. Discharges with pollutant concentration levels above EPA Benchmarks and/or the CTR demonstrate that a facility has failed to develop and/or implement BMPs that achieve compliance with BAT for toxic pollutants and BCT for conventional pollutants. The Compucraft Facility monitoring data demonstrates consistent exceedances of not only the CTR, but also EPA benchmarks and NALs. (See monitoring data above).

² Toxic pollutants are found at 40 CFR § 401.15 and include, but are not limited to: lead, nickel, zinc, silver, selenium, copper, and chromium.

³ Conventional pollutants are listed at 40 CFR § 401.16 and include biological oxygen demand, total suspended solids, pH, fecal coliform, and oil and grease.

⁴ See 2015 Multi-Sector General Permit Fact Sheet, pages 55-56

⁵ See New Industrial Permit, Table 2

Thus, Compucraft's storm water discharge sampling data demonstrates the Facility has not developed and/or implemented BMPs that meet the standards of BAT/BCT. (See *Baykeeper, supra*, 619 F.Supp. 2d at 925 ["Repeated and/or significant exceedances of the Benchmark limitations should be relevant" to the determination of meeting BAT/BCT]).

Observations by City of Santee stormwater consultants confirm these violations. As a result of her November 14, 2012 inspection, a City of Santee stormwater inspector noted multiple failures to implement BMPs. The inspector noted lids were open, bins needed lids, and the Facility needed sweeping and cleaning.

As a result, the Compucraft Owners and/or Operators are in violation of Effluent Limitation (B)(3) of the General Industrial Permit and Section V.A. of the New Industrial Permit. Every day the Compucraft Owners and/or Operators operate with inadequately developed and/or implemented BMPs in violation of the BAT/BCT requirements is a separate and distinct violation of the Permits and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311 (a)). Therefore, the Compucraft Owners and/or Operators have been in daily and continuous violation of the BAT/BCT requirements of the General Industrial Permit every day since at March 7, 2012, and are subject to penalties for all such violations. The Compucraft Owners and/or Operators are liable for civil penalties for 1,499 violations of the General Industrial Permit and the Clean Water Act.

These violations are ongoing and the Compucraft Owners and/or Operators will continue to be in violation every day they fail to develop and/or implement BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm water discharges at the Compucraft Facility.

D. Inadequate Storm Water Pollution Prevention Plan

One of the main requirements for the General Industrial Permit is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A; New Industrial Permit §X.). Compucraft has not developed an adequate SWPPP as required by the General Permit or New Industrial Permit. (New Industrial Permit, §X.A.1-10).

The latest Compucraft SWPPP, uploaded to SMARTS on May 22, 2015, fails to account for the numerous and repeated violations identified by Compucraft's monitoring data – ensuring these violations continue. The SWPPP is therefore inadequate. (See New Industrial Permit §I.E.37. ["Compliance with water quality standards may, in some cases, require Dischargers to implement controls that are more protective than controls implemented solely to comply with the technology-based requirements in this General Permit."]). If a discharger determines industrial discharges contain pollutants in violation of Receiving Water Limitations (Section VI), the discharger is required to assess the BMPs in the SWPPP and determine whether additional measures and a revised SWPPP are necessary. (New Industrial Permit, §XX.B.1). Compucraft has clearly failed to comply with these requirements.

Every day the Compucraft Owners and/or Operators operate the Facility without an adequate SWPPP constitutes a separate and distinct violation of the General Industrial Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Compucraft Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit for not submitting an adequate SWPPP since enrollment. These violations are ongoing and the Compucraft Owners and/or Operators will continue to be in violation every day they fail to provide an adequate SWPPP for the Facility. Thus, the Compucraft Owners and/or Operators are liable for civil penalties of up to \$37,500 per day of violation of the General Industrial Permit and the Clean Water Act.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Compucraft must develop and implement an updated SWPPP and address its numerous water quality violations, including its CTR and EPA benchmark exceedances. Should the Compucraft Owners and/or Operators fail to do so, CERF will file an action against Compucraft for its prior, current, and anticipated violations of the Clean Water Act. CERF's action will seek all remedies available under the Clean Water Act § 1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day. CERF may further seek a court order to prevent Compucraft from discharging pollutants.

Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

Marco A. Gonzalez
COAST LAW GROUP LLP
1140 S. Coast Highway 101
Encinitas, CA 92024
Tel: (760) 942-8505 x 102
Fax: (760) 942-8515
Email: marco@coastlawgroup.com

CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP


Marco A. Gonzalez


Livia Borak

Attorneys for
Coastal Environmental Rights Foundation

cc:

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Jared Blumenfeld, Region 9 Administrator Alexis Strauss, Deputy Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA, 94105	Dave Gibson, Executive Officer Catherine Hagan, Staff Counsel San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, CA 92108-2700
Gina McCarthy EPA Administrator Mail Code 4101M USEP A Ariel Rios Building (AR) 1200 Pennsylvania Avenue N.W. Washington, DC 20004	Thomas Howard Executive Director State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0110

